S.B. Civil Sales Tax Revision No.18/2005

Distt. Level Screening Committee, Bikaner.
vs.
M/s. Gautam Industries, Nokha.

Date : 22.5.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha, for the petitioner.
Mr. Dinesh Mehta, for the respondent.

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At the request of learned counsel for the parties, this revision petition itself is heard finally.

The revenue is aggrieved against the order dated 17.9.2002 by which the Tax Board held that the delay in moving the application for seeking tax exemption under the Rajasthan Sales Tax/Central Sales Tax Exemption Scheme for Industries, 1998 (for short 'the Scheme of 1998') beyond the maximum period for which delay can be condoned under Clause 4(d) can be condoned by the Screening Committee or by the order of the Tax Board.

The fact which is not in dispute is that the respondent dealer applied for benefit of tax exemption under the Scheme of 1998 after delay of 346 days. Admittedly, this delay was beyond the period of 180

days from the date of commencement of the Scheme of 1998, within which the respondent dealer could have moved the application for getting benefit of tax exemption under the Scheme of 1998. There is a provision empowering the screening committee to condone the delay of only 90 days beyond above 180 days under Clause 4(d) of the Scheme of 1998.

Learned counsel for the revenue submits that clause 4(d) is not only prescribing the period within which one can apply for the benefit under the Scheme of 1998 but it also restricts the power of screening committee in condoning the delay when the application is filed after 90 days from maximum period within which the application can be filed for the said benefit under the Scheme of 1998. In view of the above, it is a question of jurisdiction of the screening committee and the screening committee is debarred from condoning the delay by specific use of the language as used in the Sub-clause (d) of Clause 4 of the Scheme of 1998 itself, then by any implication, the power cannot be given to the Screening Committee to condone the delay when it is not falling within the jurisdiction of the screening committee.

Learned counsel for the assessee submits that in identical circumstances, the revenue obeyed the earlier

decision of the Tax Board and in pursuance to that, gave benefit to identical unit.

I considered the submissions of learned counsel for the parties.

Sub-clause (d) of Clause (4) of the Scheme of 1998 reads as under :-

> "(d) An industrial unit, eligible to claim benefits under this Scheme, shall make an application in four sets in appropriate Form A-1/A-2/A-3/A-4 along with affidavit in Form-B, duly attested, appended to this notification to the Member Secretary of the appropriate Screening Committee within one hundred eighty days from the date of the commencement of this Scheme or the date of commencement of commercial production, or the date of commencement of expanded or diversified production, or the date of declaration of sickness, or the date of transfer of the whole project or the date of change of management of a unit in any way, whichever is later. However, the appropriate Screening Committee may, on sufficient cause being shown, condone the delay not exceeding ninety days, in filing of the application."

The language used in the sub-clause (d) of Clause 4 is very much clear and by this very provision empowering screening committee to condone the delay upto 90 days, a restriction has been imposed by the

same clause in the matter of condonation of delay beyond the period of 90 days than the restriction upon the screening committee in the matter of condonation of delay has been imposed consciously by the rule framing authority. Therefore, the screening committee cannot condone the delay of more than 90 days against the Rule. Merely on the basis of sympathetic attitude, the power which has not been given by the Rules and which has been taken away by specific rule, cannot be exercised. The Tax Board therefore committed error in law in holding that the screening committee could have condoned the delay beyond the period of additional 90 days for which the screening committee has no jurisdiction to condone the delay.

Consequently, this sales tax revision is allowed, the order of the Tax Board dated 17.9.2002 is set aside and the application of the respondent dealer stands rejected.

(PRAKASH TATIA), J.

S.Phophaliya